Procurement Integrity Act

Overview

- Provisions deleted from the prior act
- Bans on obtaining & disclosing information
- Requirement to report employment contacts
- The 1-year ban on accepting compensation from the contractor

The New Procurement Integrity Act (PIA)

- Congress recently rewrote the PIA -- the new version went into effect on 1 Jan 97
- Both the prior and new PIA are implemented by FAR 3.104. FAR 3.104 was updated in 1997.

Provisions in the Prior PIA That Are Not in the New PIA

- Ban on procurement officials accepting gifts from competing contractors deleted -- but employees must still follow gift rules in joint ethics regulation (JER)
- Requirement for govt.. Employees to receive PIA training deleted -- but employees who complete a financial disclosure report (SF 278 or OGE form 450) still must receive ethics training once a year

Provisions in the Prior PIA That Are Not in the New PIA

- Requirement that federal employees, contracting officers, & competing contractors complete PIA certificates deleted
- 2-year post-employment restriction deleted (but new PIA has a 1-year ban on accepting compensation from the contractor)
- Many of the rules in prior PIA applied to "procurement officials" -- that term is <u>not</u> in the new PIA

New PIA -- Ban on Obtaining Procurement Information

- New PIA provides that a person may not knowingly obtain “source selection information” or “contractor bid or proposal information” before *competitive contract* award, other than as provided by law
- Ban applies to everyone, including federal employees & contractor employees

New PIA -- Ban on Disclosing Procurement Information

- The ban applies to:
  - Current and former federal employees, &
  - Anyone who is advising or has advised the U.S. Govt.. Regarding the procurement (i.E. Contractor employees & consultants)

Definition of Source Selection Information (SSI)

- "SSI" includes the following information:

  (1) bid prices submitted by bidders

  (2) costs or prices submitted by offerors

  (3) source selection plans

“SSI” Information Continued

(4) technical evaluation plans

(5) technical evaluations of proposals

(6) cost or price evaluations of proposals

(7) competitive range determinations

Almost There ...

(8) rankings of bids or proposals

(9) reports & evaluations of source selection panels, boards or advisory councils, and . . .

Finally . . .

(10) other information, if:

(A) contracting officer has determined that its disclosure would jeopardize integrity of the procurement, and

(B) it is marked with “source selection Information -- see FAR 3.104”

Multi-page documents. If document contains SSI, then cover page & each page that contains SSI must be marked with “source selection information--see FAR 3.104”

Public information. Information that has been disclosed publicly or made available to public is not considered as SSI

Definition of Contractor Bid or Proposal Information (CBPI)

- CBPI means any of five types of information:
  - Cost or pricing data
  - Indirect costs & direct labor rates, and overhead rates
  - Proprietary information about manufacturing processes, operations or techniques marked by the contractor

Definition of Contractor Bid or Proposal Information (CBPI)

- More CBPI:
  - Information marked by the contractor as “contractor bid or proposal information”
  - Information marked by the contractor IAW FAR clause 52.215-12, entitled “restriction on disclosure and use of data”

What Are Not Violations of the Disclosure Ban?

- Information already disclosed publicly or made available to public
- Information disclosed by contractors. They are not prohibited from disclosing their own CBPI
- SSI & CBPI information disclosed, pursuant to a proper request, to congress, the comptroller general, or the inspector general (provided the SSI or CBPI is highlighted and notice given that disclosure is restricted by PIA.)

What If CO Disagrees With Contractor?

- If the CO believes that:
  - -- Information marked as proprietary is not;
  - -- Information marked as CBPI is not, OR
  - -- Information marked IAW FAR 52.215-12 should not be so marked, then

CO may ask contractor to justify marking

Penalties for Disclosing or Obtaining SSI or CBPI

- Can be civil or criminal: five years in prison, or a fine, or both.
- Criminal, if an individual or organization improperly discloses or obtains SSI or CBPI --
  - In exchange for anything of value, or
  - In order to obtain for himself, or give to anyone else, a competitive advantage in the award of a federal contract.

Penalties for Disclosing or Obtaining SSI or CBPI

- Civil, if disclosure violations were not in exchange for anything of value, or to give anyone a competitive advantage.

Civil or Administrative Consequences

- Organizations:
  - Civil penalty of $500,000 for each violation,
  - Rescission of contract, if contract awarded,
  - Disqualification of offeror or cancellation of procurement, if contract not yet awarded, &
  - Suspension & debarment proceedings

Civil or Administrative Consequence

- Individuals:
  - Civil penalty of $50,000 for each violation; or
  - Adverse personnel action (i.E., Termination)

Let's See What You Learned

- E. Gar specialist is part of a team writing a sow for a sole source contract.
- Thinking he could shorten the process, specialist sends an advance copy to the sole source contractor for off-line comments.
- Violation?
- Yes -- because released SSI
- No -- because a sole source contract

The Answer Is . . .

- Not a. Although he released SSI, a sole source contract is not considered a "federal agency acquisition" under PIA.
- That leaves b. However, specialist should be careful not to send information until CO authorizes AND we have a J&A.
- The focus of the new PIA is to prevent unfair competitive advantage. Until we have an executed J&A, there is a chance of competitive procurement.

Job Hunting -- Employment Contact Reporting Rule

If an employee (officer, enlisted or civilian) is --

- Participating personally & substantially in a procurement, and
- Contacts, or is contacted by, a bidder or offeror regarding possible employment ...

Then the employee must --

- Give written report to supervisor & ethics counselor, *and*
- Either (1) reject the possibility of employment, or (2) seek disqualification from working on procurement until job discussions end & there is no arrangement for employment

Application of the Job Hunting -- Employment Contact Reporting Rule

- Rule applies only to contracts in excess of simplified acquisition threshold ($100,000)
- Rule applies only between date when bids or proposals are received & contract award date
- Rule applies to contacts with “bidders” & “offerors”

What If an Employee Fails to Comply With Employment Contact Reporting Rule?

- The maximum penalty is:
  - Civil penalty of $50,000 for each violation, &
  - Adverse personnel action (i.E. Termination)

What About Organizations?

- If a company (or organization) that is a bidder or offeror in a procurement contacts, or is contacted by, an employee who is participating in the procurement, and company engages in employment discussions with employee, and company knows employee has not reported the contact to supervisor & to ethics counselor, the maximum penalty is:

Makes for an Unprofitable Day

- Civil penalty of $500,000 for each violation,
- Contractual remedies, if contract awarded,
- Disqualification of offeror or cancellation of procurement, if contract not awarded, &
- Suspension & debarment proceedings

An Easy Quiz

- Suppose specialist becomes a member of the source selection board.
- We have offers and are beginning evaluation.
- One of the offerors contacts specialist with a job opportunity.
- Specialist immediately notifies supervisor and ethics counselor.
- Can the supervisor demand that specialist terminate employment discussions?

Supervisors ???

- Cannot force specialist to terminate employment discussions.
- Employees must disqualify themselves and may self-disqualify without seeking approval from their agency.
- Significant change from the old PIA, which required agency approval of recusal requests, thus allowing agencies to prohibit employment discussions after evaluations began.

Post-employment 1-year Compensation Ban

- People who serve in one of seven positions, or who make one of seven types of decisions, on a contract over $10 million, may not accept compensation from the contractor for 1 year as an employee, consultant, officer or director
- Ban can apply to officers, enlisted & civilians

What Are the Seven Positions?

- Procuring contracting officer
- Source selection authority
- Member of source selection evaluation board
- Chief of financial or technical evaluation team
- Program manager
- Deputy program manager
- Administrative contracting officer

How Do You Calculate the $10 Million?

- Decision to award a contract over $10 million (including options, and estimated value of all task orders under IDIQ/requirements contracts)
- Decision to award a subcontract over $10 million
- Decision to award a modification that is over $10 million of a contract or subcontract
- Decision to award a task order or delivery order over $10 million

Is That All?

- Decision to establish overhead or other rates applicable to a contract or contracts valued over $10 million
- Decision to approve issuance of a contract payment or payments over $10 million
- Decision to pay or settle claim over $10 million

When Does the Ban Start to Run?

- For pco's, ssa's, SSEB members, & evaluation team chiefs, ban starts on date of contract award
  - Exception: if an individual was serving in the position on the date of contractor selection, but not on the date of contract award, the ban begins to run on date of contractor selection
- For pms, dpms & acos, ban starts to run on last day of service in the position
- For decisionmakers, ban starts on date of decision

But This Is a BIG Company ...

- Other divisions: 1-year ban does not apply to accepting compensation from any division or affiliate of a contractor that does not produce the *"same or similar products or services"* as the entity of the contractor that has the contract upon which the person has worked

The First Thing We Do Is Kill All the Lawyers -- William Shakespeare

- Individuals can (and should) request legal advice on whether 1-year ban applies to them
- The legal opinion (“30-day letter”) must be issued within 30 days after receipt of written request (or as soon thereafter as practicable)

I Violated the Rule … What Happens to Me?

- If an individual accepts compensation from a contractor in violation of 1-year compensation ban, maximum penalty is:

  Civil penalty of $50,000, plus

  Civil penalty of twice the amount of compensation the individual received in violation of the ban

Company Violates the Rule ...

- Civil penalty of $500,000, plus twice the amount of compensation the company paid in violation of the ban,
- Contract remedies (e.G. Recapture of profit), &
- Suspension & debarment proceedings

Final Exam (and I Mean Final)

- Specialist worked his way up to program manager. The project relied upon contractor X -- a sole source contractor.
- The contract is in excess of $10 million.
- Specialist has a fight with the legal office and leaves his position.
- X company immediately “snaps up” specialist to work in the same general program area.
- Can specialist accept the job, and work in this area?

Think About This One . . .

- Sole source contract -- PIA inapplicable.
- Wrong! Post employment restrictions apply to sole source and competitive procurements.
- PM for contracts in excess of $10 million may not accept compensation from the contractor for one year.
- UNLESS working for another division or affiliate which does not produce same or similar products as the division in which the PM was involved.

That's all – any questions??